IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 3231 of 2004

Date of Decision: 25.09.2006

The New India Assurance Company Ltd.

...Petitioner

Vs.

Kusum & Ors.

... Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Neeraj Khanna, Advocate,
for the petitioner.

Vinod K.Sharma, J.

The present revision petition has been filed against an order dated 12.6.2003 passed by the learned Additional District Judge, Fatehgarh Sahib dismissing the execution application filed by the petitioner Insurance Company.

Brief facts of the case are that award for a sum of Rs.2,68,000/- was passed by the learned Motor Accident Claims Tribunal (for short the Tribunal) with regard to the death of Sanjay Kumar in favour of claimants/ his legal representatives. The respondent driver was held to be holding a fake licence at the time of the accident. However, the claimants, legal

representatives of the deceased were given opportunity to recover the amount at the first instance from the Insurance Company as the vehicle was duly insured. It was also mentioned that the Insurance Company could recover the same from the owner and driver of the offending vehicle.

In pursuance to the award a sum of Rs.3,03,552/- was claimed by the Decree Holders from the Insurance Company. The petitioner accordingly filed an execution application against the respondents herein for the recovery of this amount.

The owner of the bus filed objections in execution application on the ground that in the absence of any decree or order the execution application was not maintainable. In order to recovery the amount it was necessary to file a civvil suit for recovery.

In support of execution application, the Insurance Company i.e. the petitioner had placed reliance on the judgment of Hon'ble Delhi High Court in **FAO No. 207 of 1997 Smt. Sheela Devi Batra and others Vs. Rajpal and others** wherein it was held that the Insurance Company was within its rights to recover the amount from the insured and driver by moving the Executing Court without taking recourse to the civil suit.

The learned Executing Court relied upon the following authorities to reject this contention:-

i) The National Insurance Company Ltd. Chandigarh Vs. Roshni Devi and Ors. (2002-2) PLR 50,

ii) National Insurance Company Ltd. Vs.Dr.R.K. Duggal and Ors. (2002-1) PLR 39 and

iii) Indu Bhushan Vs. Major Singh and Ors. (2001-3) The Punjab Law Reporter 813.

Learned Executing Court distinguished the authority of the Hon'ble Delhi High Court by holding that in the said case excess payment was made to the claimants by the Executing Court which was sought to be recovered. Learned Executing Court placed reliance on the judgments of this Court in (2002-1) PLR 39 and (2001-3) PLR 813 National Insurance Company Ltd. Vs. Dr.R.K. Duggal and Ors. and Indu Bhushan Vs. Major Singh and Ors. (supra) to hold that in order to recover the amount from the owner and driver it was necessary to file a civil suit.

Mr. Neeraj Khanna, learned counsel for the petitioner challenged the order of the learned Executing Court by placing reliance on Section 174 of the Motor vehicles Act, which reads as under:

> **"174. Recovery of money from insurer as arrear of land revenue.--** Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue."

The reading of this Section shows that a certificate can be issued in case there is an order in this regard and therefore, the provisions of Section 174 of the aforesaid Act cannot apply to a case where the Tribunal has not issued any such direction or order and merely gave an opportunity to the Insurance Company to recover the amount from the owner/driver.

Learned counsel for the petitioner thereafter placed reliance on the judgment of Hon'ble Supreme Court in the case of **Oriental Insurance Company Limited Vs. Shri Nanjappan and others (2004-2) P.L.R. 51**. Para No.8 of the said judgment reads as under:-

> "8. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in *Baljit Kaur's case* (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned executing court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the concerned regional transport authority. The executing court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realization by disposal of the securities to be

furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

The reading of the judgment shows that the Hon'ble Supreme Court in the facts and circumstances of that case had directed that the Insurance Company can recover the amount from the insured and the Insurance Company shall not be liable to file a separate suit. This cannot be said to be laying down a precedent that in all cases where the liability is fixed on the Insurance Company, it can always recover the amount from the owner/driver. In the given case it is still open to the owner to dispute the liability on the plea that he had taken all necessary steps to see that the driver had a licence and he had no means to find out that the same was fake.

Under these circumstances, in the absence of directions in the main case allowing the Insurance Company to recover the amount without resorting to Civil Court it was not open to the Insurance Company to move the Executing Court for the execution of the award. Findings of the learned Executing Court, therefore, cannot be faulted with as there is no illegality in the said order which can call for interference by this court in revisional jurisdiction.

Dismissed.

(Vinod K.Sharma)
Judge

September 25,2006
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